



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 210730-0154]

RIN 0648-BK35

Atlantic Highly Migratory Species; Federal Atlantic Tunas Regulations in Maine State Waters

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS is adding Maine to the list of states for which NMFS has determined that Federal Atlantic tunas regulations are applicable within state waters, consistent with section 9(d) of the Atlantic Tunas Convention Act (ATCA) and implementing regulations. NMFS is taking this action after considering a request from the Maine Department of Marine Resources (MEDMR) and reviewing the state's relevant laws and regulations. Most states and territories bordering the Atlantic and Gulf of Mexico are currently included in the list, except Maine, Connecticut, and Mississippi. This addition of Maine to the list makes Federal Atlantic tunas regulations--including but not limited to open and closed seasons, retention limits, size limits, authorized gears and gear restrictions, and permitting and reporting requirements--applicable in Maine state waters.

DATES: This final rule is effective on [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: Copies of this rule and supporting documents are available from the HMS Management Division website at <https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species>.

FOR FURTHER INFORMATION CONTACT: Carrie Soltanoff (carrie.soltanoff@noaa.gov) or Larry Redd, Jr. (larry.redd@noaa.gov) at 301-427-8503.

SUPPLEMENTARY INFORMATION: Atlantic tunas fisheries are managed under the authority of ATCA (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*). The 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP) and its amendments are implemented by regulations at 50 CFR part 635. Section 9(d) of ATCA, 16 U.S.C. 971g(d)(2), states that regulations promulgated to implement recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT) shall apply within the boundaries of any state bordering the Convention area (the Atlantic Ocean and adjacent seas) if the Secretary of Commerce, after notice and an opportunity for the state to request a formal hearing, determines that such state does not implement regulations consistent with ICCAT recommendations or if state regulations are less restrictive than the Federal regulations or are not effectively enforced. For Atlantic tunas, section 9(d) of ATCA is implemented in the Atlantic HMS regulations at 50 CFR 635.1(b). Atlantic tunas regulations in part 635 include open and closed seasons, retention limits, size limits, authorized gears and gear restrictions, and permitting and reporting requirements, among others. Atlantic tunas managed under the regulations in part 635 are bluefin, bigeye, albacore, yellowfin, and skipjack tunas.

Background

The proposed rule published on April 26, 2021 (86 FR 22006). Additional background on this rulemaking can be found in that proposed rule and is not repeated here. The comment period for the proposed rule closed on June 10, 2021.

This final rule adds Maine to the list of states at § 635.1(b), making Federal Atlantic tunas regulations at 50 CFR part 635 applicable within Maine state waters. In reviewing Maine marine resource laws and regulations regarding tuna fishing in state waters and based on consideration of public comments, NMFS has determined that application of Federal regulations in state waters is warranted, consistent with the State's request and the ATCA criteria. The ATCA criteria require the Secretary of Commerce, after notice and an opportunity for the State to request a formal hearing, to determine whether applicable states implement regulations consistent with ICCAT recommendations and if state regulations are less restrictive than the Federal regulations or are not effectively enforced. NMFS determined that the State does not meet the criteria, particularly given the State's communication that it can no longer ensure that state regulations are consistent with the Federal regulations on an ongoing basis. The State of Maine did not request a formal hearing for this action although NMFS held a public webinar to collect public comment on May 14, 2021.

This rule will provide regulatory consistency; enhance enforcement of season closures, retention limits, size limits, and other Federal tunas regulations in Maine state waters; and address regulation given the State of Maine's observation of increased commercial tuna fishing activity in state waters. This change also will more directly ensure that any tunas landed in state waters are reported in compliance with regulations implementing ICCAT requirements.

Response to Comments

NMFS did not receive written comments on the proposed rule but did receive a comment during the public webinar. NMFS summarizes and responds to the comment below.

Comment 1: MEDMR commented that this action would ensure the long-term viability of their fleet and shore side businesses and ensure sustainable management of

the tuna fisheries. MEDMR reiterated their request for this regulatory change and their lack of capacity to stay in sync with the highly dynamic Federal tuna management regulations.

Response: NMFS agrees that Atlantic bluefin tuna management is dynamic, and NMFS agrees that implementation of Federal regulations in Maine state waters will better ensure that tuna fishing activities in Maine state waters are consistent with Federal management measures such as open and closed seasons, retention limits, size limits, authorized gears and gear restrictions, and permitting and reporting requirements. This will simplify and help ensure sustainable management within the ranges of Atlantic tunas stocks.

Changes from the Proposed Rule

The final rule contains no changes from the proposed rule.

Classification

The NMFS Assistant Administrator has determined that this final rule is consistent with the 2006 Consolidated Atlantic HMS FMP and its amendments, the Magnuson-Stevens Act, ATCA, and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

This final rule does not include any change to a collection of information requirement for purposes of the Paperwork Reduction Act of 1995. The existing collection of information requirements continue to apply under the following OMB Control Numbers: 0648-0327 Atlantic HMS Permit Family of Forms, 0648-0328 Atlantic HMS Recreational Landings Reports, and 0648-0371 HMS Vessel Logbooks and Cost-Earnings Reports.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed

rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties,
Reporting and recordkeeping requirements, Statistics, Treaties.

Dated: July 30, 2021.

Samuel D. Rauch, III

Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. In § 635.1, revise paragraph (b) to read as follows:

§ 635.1 Purpose and scope.

* * * * *

(b) Under section 9(d) of ATCA, NMFS has determined that the regulations contained in this part with respect to Atlantic tunas are applicable within the territorial sea of the United States adjacent to, and within the boundaries of, the States of Maine, New Hampshire, Massachusetts, Rhode Island, New York, New Jersey, Delaware,

Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Louisiana, and Texas, and the Commonwealths of Puerto Rico and the Virgin Islands. NMFS will undertake a continuing review of State regulations to determine if regulations applicable to Atlantic tunas, swordfish, or billfish are at least as restrictive as regulations contained in this part and if such regulations are effectively enforced. In such case, NMFS will file with the Office of the Federal Register for publication notification of the basis for the determination and of the specific regulations that shall or shall not apply in the territorial sea of the identified State.

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